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Chairman: Mr. LEHMANN (Denmark)

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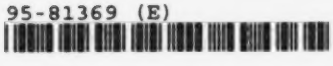

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The meeting was called to order at 10.25 a.m.

AGENDA ITEM 143: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-EIGHTH SESSION (continued) (A/50/17 and 434)

1. Mr. NAGY (Hungary) congratulated the United Nations Commission on International Trade Law (UNCITRAL) on concluding its consideration of the draft Convention on Independent Guarantees and Stand-by Letters of Credit at its twenty-eighth session. The adopted text, which reflected an appropriate balance between the traditions of various legal systems, was generally acceptable to his delegation. The draft Convention should be transmitted to the General Assembly for approval and then opened for signature, rather than submitted to a diplomatic conference.

2. He hoped that, at its twenty-ninth session in 1996, UNCITRAL would be able to adopt the text of the Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication, as well as the draft Guide to Enactment of the Model Law. It should also adopt in final form the draft Notes on Organizing Arbitral Proceedings. His delegation supported the Commission's decision to postpone its deliberations on whether to undertake work in the areas of multi-party arbitration and the taking of evidence in arbitration.

3. His delegation agreed that a working group should discuss the various problems posed by receivables financing, on the basis of the preliminary draft uniform rules drawn up by the Secretariat. Such rules would remove the obstacles arising from the uncertainty that existed in various legal systems.

4. Ms. BARRETT (United Kingdom) agreed with the Commission that the General Assembly should adopt the text of the Convention on Independent Guarantees and Stand-by Letters of Credit in its current form and open it for signature at the current session.

5. Her delegation would play its part in seeking to ensure that, at its twenty-ninth session, UNCITRAL completed its consideration of two important texts, namely, the Model Law on Electronic Data Interchange, which would be a valuable resource for countries drawing up or reviewing their law in that rapidly expanding area, and the Notes on Organizing Arbitral Proceedings, which would be particularly useful in cases where parties came from different legal backgrounds.

6. Regarding the Commission's new areas of work, namely, cross-border insolvency, electronic bills of lading and legal aspects of receivables financing, it was important to avoid overlapping with other international organizations and bodies. In view of the clearly articulated desire for international cooperation, her delegation believed that the proposals put forward by the Working Party on Facilitation of International Trade Procedures, or Working Party 4, of the Economic Commission for Europe were unacceptable and that the General Assembly should reaffirm the role of UNCITRAL as the core legal body within the United Nations system in the field of international trade law.

7. Mr. BELLOUKI (Morocco) noted with satisfaction the completion of work on the draft Convention on Independent Guarantees and Stand-by Letters of Credit, which ensured an acceptable balance between the rights and obligations of the parties and different legal systems and international practice. The General Assembly should adopt the draft in its current form, without organizing a diplomatic conference. His delegation would, however, have preferred article 1 of the Convention to deal with definitions, including the definition of undertaking which currently appeared in article 2, paragraph 1. An explanation of the legal scope of the Convention would also be very useful.

8. His delegation hoped that UNCITRAL would complete its work on the Model Law on Legal Aspects of Electronic Data Interchange and on the Notes on Organizing Arbitral Proceedings at its next session, since it had a keen interest in both topics. Regarding the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, his delegation endorsed the proposal to draft a guide for legislators, accompanied by a model law on the application of the Convention.

9. He noted with satisfaction the training and technical assistance activities undertaken by the Secretariat and UNCITRAL to ensure the broad dissemination of international trade law, particularly in developing countries. It was important to facilitate the participation of such countries in the work of UNCITRAL. The universality of the legal texts drafted under the Commission's auspices actually depended on the involvement of the largest possible number of countries in their design, dissemination and assimilation.

10. Mr. LEGAL (France) welcomed the adoption of the draft Convention on Independent Guarantees and Stand-by Letters of Credit and said that his delegation was prepared to adopt in its current form the text prepared by UNCITRAL at its twenty-eighth session.

11. Regarding its future work, UNCITRAL should give priority to completing its work on the draft Model Law on Legal Aspects of Electronic Data Interchange and the draft Notes on Organizing Arbitral Proceedings, which would be submitted to its twenty-ninth session for adoption. Regarding the Notes, his delegation acknowledged that its concerns about the necessary flexibility of arbitral proceedings had been taken into consideration. Nevertheless, it would be keeping a close eye on respect for the three principles which had been borne in mind in preparing the draft Notes, namely, that they must not impinge upon the flexibility of arbitral proceedings, that they must confine themselves to reminding arbitrators of the issues that it would be useful to discuss, and that they must not recommend using any particular procedure.

12. While endorsing the two topics chosen for the Commission's future work, namely receivables financing and cross-border insolvency, his delegation believed that the first issue was more pressing.

13. His delegation was particularly interested in the regional training seminars on international trade law techniques organized primarily for representatives of developing countries. That interest was demonstrated by France's contribution to the seminar programme.

14. He noted with satisfaction that documents in French were now being distributed more rapidly and hoped that that situation would continue.

15. Mr. TARASSENKO (Russian Federation) noted that UNCITRAL was one United Nations organ which produced tangible results. He welcomed the completion of the draft Convention on Independent Guarantees and Stand-by Letters of Credit and was pleased to note that the text remained faithful to the work done previously in that field, in particular to the Uniform Customs and Practice for Documentary Credits formulated by the International Chamber of Commerce. Mindful of the high calibre and painstaking nature of the work that had gone into preparing the draft Convention, his delegation endorsed the recommendation that the General Assembly should adopt the draft Convention in its current form and open it for signature, thereby avoiding the expense of convening a diplomatic conference.

16. The Commission had made good progress towards producing the draft Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication. It would be particularly useful for the work of the Commission to focus on transport documents, in particular maritime bills of lading, since maritime transport was a field in which EDI played a predominant role and in which the standardization of law was a matter of particular urgency. It was to be hoped that UNCITRAL would complete the draft Model Law at its twenty-ninth session.

17. The Commission had also carried out useful work on the draft Notes on Organizing Arbitral Proceedings, which would make it possible to follow practices in accordance with law, particularly in countries in transition which had not yet acquired sufficient experience in the area of international arbitration.

18. As far as the Commission's future work was concerned, a scale of priorities should be established, based on the interests of the whole international community, with a view to obtaining positive results. Cross-border insolvency was of particular interest from that point of view. An impressive number of experts in insolvency matters had participated in the UNCITRAL/INSOL Colloquiums, organized in Vienna from 17 to 19 April 1994 and in Toronto on 22 and 23 March 1995. Those Colloquiums, which facilitated cooperation between legal organs concerned with insolvency, had made it possible to determine ways in which the question might be studied by UNCITRAL.

19. It was important to continue the preparation of "Guidelines for the Development, Negotiating and Contracting of Build-Operate-Transfer (BOT) Projects", particularly for countries in which entire sectors of activity were undergoing privatization. His delegation was willing to take an active part in efforts to unify the rules controlling assignment in receivables financing, which could usefully supplement the Convention on International Factoring.

20. During the past year, UNCITRAL had carried out very useful work in training and technical assistance, particularly in the form of expert services for the drafting of national legislation. It was most important that the laws of countries with legal systems in transition should be drafted in accordance with international conventions, model laws and other legal instruments in the field

of commercial law; that would improve the chances of those countries integrating themselves into the market economy. In that regard, the accession of newly independent States to the main international conventions elaborated within the framework of UNCITRAL was of particular importance.

21. Finally, he emphasized the need to coordinate the work of UNCITRAL with that of the numerous other international organizations which were concerned with the same questions, particularly at a time when financial resources were scarce.

22. Mr. POLITI (Italy) noted with pleasure the efficiency of UNCITRAL and emphasized the importance of its work on independent guarantees and stand-by letters of credit. Since those documents were increasingly used in international commerce, there was an urgent need to provide uniformity and clarity in the law dealing with them. The draft Convention prepared by UNCITRAL met those demands and his delegation therefore supported the recommendation that the General Assembly should adopt it at its fiftieth session. He was confident that UNCITRAL would, at its next session, complete the draft Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication and the draft Notes on Organizing Arbitral Proceedings.

23. His delegation supported the programme of work of UNCITRAL. It particularly welcomed the work carried out on assignment in receivables financing and on cross-border insolvency. Particularly in the field of assignment in receivables financing, his delegation shared the view that the work of other international bodies such as UNIDROIT should be taken into account, in order to avoid duplication of effort and possible conflicts.

24. He welcomed the publication of the three additional sets of abstracts which had been added to the Case Law on UNCITRAL Texts (CLOUT); CLOUT publications were extremely useful in promoting the uniform interpretation and application of UNCITRAL texts. He was also glad to note that UNCITRAL had, during the past year, continued its programme in the field of training and assistance, with a view to increasing awareness of the Commission's work and its legal texts. His delegation was especially grateful to the secretariat of UNCITRAL for its renewed sponsorship of the international trade law course organized in Turin.

25. Mr. KULYK (Ukraine) said that the work of UNCITRAL was of particular importance for newly independent States which were trying to harmonize their national legislation with international rules concerning trade law. His delegation therefore welcomed the substantial progress achieved by UNCITRAL at its latest session, particularly in the area of electronic data interchange (EDI), and hoped that at its twenty-ninth session the Commission would be able to adopt the draft Model Law and the draft Guide to Enactment of the Model Law. His delegation also supported the proposal that the future work of the Commission in that area should focus on EDI transport documents, in particular on electronic maritime bills of lading and their use in the context of existing legislation.

26. There was no doubt as to the usefulness of the draft Notes on Organizing Arbitral Proceedings, particularly for countries, such as Ukraine, which had little experience in the settlement of disputes. His delegation therefore followed with particular attention the work of UNCITRAL in that sphere.

27. As to the future work of the Commission, consideration should be given to the need for and the feasibility of the tasks entrusted to it. "Build-operate-transfer" (BOT) projects were of particular importance for countries in transition, since they enabled them to mobilize the private funds and foreign investments which they needed for the development of their infrastructures. It would therefore be useful if UNCITRAL were to establish a legal framework in that area.

28. UNCITRAL should also continue to explore the possibility of elaborating legal mechanisms or instruments to reduce disparities between national laws relating to insolvency because, in the absence of universally-accepted procedures, extremely complex problems would continue to arise.

29. Finally, his delegation attached great importance to the activities of UNCITRAL in the area of the collection and dissemination of information, and welcomed the continuing publication of abstracts of Case Law.

30. Mr. LEHTO (Finland) welcomed the completion by UNCITRAL of the draft Convention on Independent Guarantees and Stand-by Letters of Credit, and fully supported the recommendation that the General Assembly should consider the draft text with a view to adopting a United Nations convention on the basis thereof.

31. Regarding the future, he hoped that, at its twenty-ninth session, UNCITRAL would be able to complete its work on the Model Law on EDI, which would help to remove obstacles to the use of electronic data interchange in international trade transactions, and thus facilitate those transactions.

32. In its programme of work for the future, the Commission had managed to avoid choosing topics which were too comprehensive or unrealistic, restricting itself to clearly defined topics in which there was a need for harmonization. The Commission might also wish to set time-limits for the realization of its projects.

33. The Commission was to be commended for having developed different methods for cooperation with other international bodies, particularly in the field of private international law. That would enable it to make better use of resources and to benefit from specialized outside expertise.

34. Mr. SMEJKAL (Czech Republic) welcomed the fact that UNCITRAL had completed its work on the draft Convention on Independent Guarantees and Stand-by Letters of Credit and wholeheartedly endorsed the Commission's recommendation that the General Assembly should adopt the Convention by means of a resolution at its current session. That approach would save both time and money and would obviate the need to convene a diplomatic conference.

35. He hoped that the Commission's work on the draft Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication would soon lead to a generally acceptable text, despite the highly complex issues involved, such as legal recognition of data messages, the requirement that information should be presented in writing and the question of electronic signatures.

36. As a State party to the Convention on the Limitation Period in the International Sale of Goods and the United Nations Convention on Contracts for the International Sale of Goods, the Czech Republic was attempting to become integrated efficiently into the system which, clearly, was a very useful one. In order to overcome the difficulties arising in that regard, it was adopting a systematic approach, for example, by attempting to define methods for collecting and processing case-law data from information available within its judicial system.

37. Mr. GRAY (Australia) commended the work done by UNCITRAL at its twenty-eighth session, including completion of the draft Convention on Independent Guarantees and Stand-by Letters of Credit and consideration of the draft Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Data Communication and the draft Notes on Organizing Arbitral Proceedings.

38. He commended in particular the work on electronic data interchange, which would continue to be an increasingly important area of the Commission's work, given the growing role of information technology in international trade. The Australian Government, which was currently studying the legal implications of the use of information technology and the "information superhighway", hoped that UNCITRAL would be able to conclude its consideration of the draft Model Law, as well as of the draft Notes on Organizing Arbitral proceedings, at its twenty-ninth session.

39. With respect to the Commission's work in the areas of training and technical assistance, the Australian Government supported the holding of symposia and seminars in the Asia-Pacific region, since they contributed to the harmonization of international trade law instruments. Such activities also enabled the Commission to increase awareness of its practical achievements. In that regard, his delegation was pleased to note that the Commission was continuing its publication of case-law on UNCITRAL texts.

40. Mr. SYARGEEU (Belarus), after commending the work of harmonization done by the Commission, said that UNCITRAL had succeeded in involving an ever increasing number of States in its work. He emphasized the need for countries which had recently undertaken the transition to a market economy to base their national legislation on the principles of international law.

41. The work of UNCITRAL found concrete expression in the conclusions of the Commission's twenty-eighth session, during which the draft Convention on Independent Guarantees and Stand-by Letters of Credit had been approved. His delegation supported that text and believed that only a convention could guarantee the degree of harmonization necessary in that area.

42. The work done by the Commission in the area of electronic data interchange and related means of communication was also satisfactory. The draft Model Law on that topic was very important as it would improve access to information systems in the field of international trade. With respect to the Model Law's scope of application, the Commission had been right to give States wishing to do so the opportunity to extend the scope of application of the Convention to areas other than trade. He also welcomed the Commission's decision to specify that the Model Law should apply to trade activities and not to trade law. Whereas

the notion of trade law was valid in some countries, it had no relevance in others.

43. Touching on the other topics considered by UNCITRAL, he said that his country agreed that the Commission should complete the Notes on Organizing Arbitral Proceedings at its twenty-ninth session, in 1996. He also commended the harmonization work done in the area of receivables financing, the cooperation with the International Bar Association in monitoring the implement in national laws of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Commission's training and technical assistance activities. As the Commission itself stated, it was necessary to keep developing countries or newly independent States informed when they considered the role that UNCITRAL legal texts were to play in their law. At a seminar held at Minsk on 29 and 30 May 1995, Belarus had received practical assistance in modifying its legislation and had found it to be entirely satisfactory.

44. Mr. KANEHARA (Japan) said that he had no objection to the adoption of the draft Convention on Independent Guarantees and Stand-by Letters of Credit by a General Assembly resolution, which would make it unnecessary to convene a diplomatic conference, even if the draft itself was not entirely satisfactory.

45. The draft Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication, in its current form, was too abstract and general. Its scope and purpose should be more clearly defined. With respect to electronic bills of lading, it would be useful to refer to the work undertaken in that area by other international organizations.

46. Japan also endorsed the decision to have the model laws on cross-border insolvency and receivables financing drafted at the working group level. Both subjects required prudent consideration and a careful analysis of the legal problems which might arise, given the diversity of existing legal systems and practices.

47. Mr. HAMDAN (Lebanon) said he hoped that his country would soon be in a position to play a more active role in the work of the Commission. Without wishing to dissociate himself from the consensus which had emerged on the draft Convention on Independent Guarantees and Stand-by Letters of Credit, his delegation would not be able to take a position on the matter as it had not yet received instructions from its Government. He lamented the fact that the Commission's report (A/50/17) had been issued so late, and he hoped that that would not be the case at future sessions.

48. Mr. GOH (Singapore), speaking as Chairman of the United Nations Commission on International Trade Law (UNCITRAL) said he was particularly encouraged by the response to the recommendation by UNCITRAL that the General Assembly should consider the draft Convention on Independent Guarantees and Stand-by Letters of Credit with a view to adopting it at its fiftieth session and opening it for signature, and by the support for the Commission's work on build-operate-transfer (BOT) projects, cross-border insolvency and arbitral proceedings.

49. He had taken note of the concerns expressed by some delegations, and they would be duly taken into account. The Commission would ensure that adequate

time was given to States for consultations on future texts. At a time when the Economic Commission for Europe was working on re-engineering the Working Party on Facilitation of International Trade Procedures, known as WP.4, it was useful to recall that UNCITRAL was the core legal body in the United Nations system for international trade law.

50. With respect to information and technical assistance to developing countries, he appealed to States that were in a position to do so to contribute to the UNCITRAL Trust Fund for Symposia. He also drew attention to the UNCITRAL Trust Fund for Travel Assistance, which was designed to help representatives from developing countries participate in sessions of the Commission or of its working groups. The Fund was of special importance in ensuring, pursuant to the request by many representatives, that developing countries should participate fully in the progressive harmonization of international trade law.

51. The CHAIRMAN announced that the Committee had concluded its debate under agenda item 143.

The meeting rose at noon.